

No. 15-709

IN THE
Supreme Court of the United States

KEITH CRESSMAN

Petitioner,

v.

MICHAEL C. THOMPSON, ET AL.

Respondents.

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Tenth Circuit**

**BRIEF FOR THE CATO INSTITUTE
AS *AMICUS CURIAE* IN SUPPORT OF
PETITIONER**

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QUESTION PRESENTED

This brief addresses the question raised by the petition for certiorari, reframed in the words of *Wooley v. Maynard*, 430 U.S. 705, 713 (1977):

“[W]hether the State may constitutionally require an individual to participate in the dissemination of an ideological message by displaying it on his private property in a manner and for the express purpose that it be observed . . . by the public.”

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INTEREST OF THE *AMICUS CURIAE*¹

The Cato Institute is a nonpartisan public-policy research foundation established in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Center for Constitutional Studies was established in 1989 to help restore the principles of limited constitutional government that are the foundation of liberty. Toward those ends, Cato publishes books and studies, conducts conferences, and produces the annual *Cato Supreme Court Review*. This case interests Cato because of its implications for one of the most fundamental freedoms, the freedom of speech.

INTRODUCTION AND SUMMARY OF ARGUMENT

In *Wooley v. Maynard*, this Court held that an individual cannot be compelled to display on his license plate a state motto to which he objects. The Court was clear that the "First Amendment protects the right of individuals to hold a point of view different from the majority and to refuse to foster . . . an idea they find morally objectionable." *Wooley*, 430 U.S. 705, 715 (1977). The court below has strangely decided that this clear and unequivocal language applies only to written words and not to ideas conveyed through pictures and other non-verbal means of expression.

¹ Pursuant to Rule 37.2(a), all parties received at least 10 days' notice of *amicus curiae*'s intent to file this brief; the parties' letters consenting to its filing have been filed with the Clerk. In accordance with Rule 37.6, counsel certifies that no counsel for any party authored this brief in whole or in part and that no person or entity other than *amicus* or its counsel made a monetary contribution to fund its preparation or submission.

Although the court below found that the image in question here was symbolic speech, it nevertheless held that the First Amendment did not protect Petitioner from being a compelled mobile billboard for that speech. In the bizarre words of the Tenth Circuit, Mr. Cressman “cannot demonstrate that the Native American image is, in fact, speech to which he objects.” *Cressman v. Thompson*, 798 F.3d 938, 950 (10th Cir. 2015). Cressman, according to the court, misunderstands the image’s message and thus disagrees with it for a constitutionally unrecognizable reason. The Tenth Circuit’s strange ruling does not align with this Court’s precedents and places an undue burden on First Amendment plaintiffs with compelled-speech claims.

Although this Court has only ever used the term “symbolic speech” to describe expressive *conduct*, the Tenth Circuit said that some *images* do not qualify as pure speech and must be analyzed under the symbolic-speech doctrine. Not only does this characterization expand the symbolic-speech doctrine beyond this Court’s precedents, it contradicts this Court’s teaching that visual and even auditory art are “unquestionably shielded” by the First Amendment.

The justifications for the symbolic-speech doctrine simply do not apply to visual art. While a parade of horrors could result from giving full First Amendment protection to anyone charged with violating a conduct regulation—a mafioso who blew up a car could claim he was “sending a message”—the same is not true of visual art. Giving mass-produced visual arts full speech protection does not risk such attempts to escape conduct regulations by claiming that actions constitute speech.

Moreover, drawing a strict line between words and images would damage this Court’s First Amendment jurisprudence. Speech in the absence of conduct should be fully protected as pure speech regardless of the speaker’s chosen style.² Standing on the sidewalk with a poster displaying a cross is just as entitled to First Amendment protection as standing there with a poster that says, “John 3:16.” The same is true for more complex images, such as a poster on which Leonardo da Vinci’s “The Last Supper” has been printed. All are pure speech and should be treated as such.

Yet the Tenth Circuit’s ruling would apparently have been different had Mr. Cressman objected to words instead of an image. Some other lower courts have also suggested that they limit the “pure speech” designation to words. This Court should step in to clarify that images and other visual art—even when printed on license plates—do not receive second-class protection.

This Court should also grant certiorari to clarify that the compelled-speech doctrine does not entitle courts to consider the reasons a person has for objecting to being forced to convey government speech. In Free Exercise Clause cases, this Court has said that it would be inappropriate for courts to inquire into the reasonableness of a person’s religious objections to a law. Similarly, this Court’s precedents require the objector to show that the government truly is compelling him to speak, but they do not grant courts the authority to determine whether the objection is based on a “correct” understanding of the speech.

² In other words, the aforementioned mafioso could claim that he was *artfully* sending a message, but courts can easily distinguish visual media from physical violence.

ARGUMENT

I. THE COURT SHOULD GRANT CERTIORARI TO CLARIFY THE MEANING OF “SYMBOLIC SPEECH”

A. The Court Has Never Applied the Term “Symbolic Speech” to Anything Other than Expressive Conduct

The term “symbolic speech” first appeared in this Court’s jurisprudence in *United States v. O’Brien*, 391 U.S. 367, 376 (1968). David O’Brien argued that the act of burning his draft card was protected “symbolic speech.” The Court agreed and created a four-part test for when a facially neutral law can be constitutionally applied to expressive conduct. *Id.* at 376–77.

From there, this Court has applied the term when students wore black armbands to school in protest of the Vietnam War, *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 505 (1969); when considering the constitutionality of political campaign expenditure limits, *Buckley v. Valeo*, 424 U.S. 1, 15–16 (1976) (suggesting that the regulations should not be analyzed as symbolic speech under *O’Brien* but rather under the “exacting scrutiny” applied to restrictions on pure speech); when protestors wanted to sleep in the park as part of their demonstration about the plight of the homeless, *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 291–94 (1984); when a man burned the American flag as part of a political demonstration, *Texas v. Johnson*, 491 U.S. 397, 399–400 (1989); and when considering the application of a public-nudity statute to nude dancing, *Barnes v. Glen Theatre*, 501 U.S. 560, 566–67 (1991).

Furthermore, as this Court has held, treating symbolic speech differently from pure speech makes

sense only in the context of expressive conduct. In *O'Brien*, for example, the Court was concerned that the First Amendment could be used to invalidate restrictions on “an apparently limitless variety of conduct” simply because it was labeled as speech. 391 U.S. at 376. The Court addressed these concerns by holding that “when ‘speech’ and ‘nonspeech’ elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify the incidental limitations on First Amendment freedoms.” *Id.* Such concerns about separating “speech” from “nonspeech” do not arise when images are used in place of words.

In *Rumsfeld v. Forum for Acad. & Institutional Rights*, 547 U.S. 47, 65–66 (2006), the Court was similarly concerned that the symbolic speech doctrine could be used to escape conduct regulations under the guise of the First Amendment. There, the Court said that it has “rejected the view that ‘conduct can be labeled “speech” whenever the person engaging in the conduct intends thereby to express an idea.’ . . . Instead, [it has] extended First Amendment protection only to conduct that is inherently expressive.” *Id.* (quoting *O'Brien*, 391 U.S. at 376). Unlike pure speech, not all conduct is inherently expressive and not all conduct that is inherently expressive is protected by the First Amendment. But this Court has indicated that art—even performance art—deserves the full protections of pure speech.

For example, in *Se. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 548–50, 557–58 (1975), this Court applied the “basic principles of freedom of speech and the press” to a prior restraint on live drama—in that case, a performance of the musical “Hair,” which involved nudity and simulated sex. The Court stated,

“[b]y its nature, theater usually is the acting out—or singing out—of the written word, and frequently mixes speech with live action or conduct. But that is no reason to hold theater subject to a drastically different standard [from that applied to pure speech].” *Id.* at 557–58. *But cf. City of Erie v. Pap’s A.M.*, 529 U.S. 277, 289 (2000) (using the *O’Brien* test to consider the application of a public-nudity law to nude dancing, but also stating that such dancing “falls only within the outer ambit of the First Amendment’s protection”).

“Symbolic speech” may be a vague category, but its use in this Court’s jurisprudence makes clear that it only comes into play when speech is combined with action. Mass-produced symbols and images do not fall into the category of “symbolic speech.”³

B. Visual Art Is Pure Speech, Not Expressive Conduct

This Court has consistently given symbols the same protection as words. In *Stromberg v. California*, 283 U.S. 359 (1931), the Court did not give a statute banning the display of a red flag any less scrutiny than it would have given a statute banning the display of words calling for the overthrow of the government. Instead, the Court overturned the conviction of Young Communist League member Yetta Stromberg because the statute’s prohibition of displaying a red flag “as a sign, symbol or emblem of opposition to organized government” was unconstitu-

³ Perhaps the confusion regarding the symbolic-speech doctrine lies in the ironic fact that symbols are not “symbolic” speech. Be that as it may, the symbolic-speech doctrine, as devised in *O’Brien* and explicated since, only concerns expressive *conduct*.

tionally vague and could have been used to punish peaceful opposition to government. *Id.* at 369–70.

The First Amendment simply does not draw a line between words and images—which would give the former utmost constitutional protection as “pure speech” and relegate the latter to a second-class status in which the speaker bears the burden of proving that the imagery is entitled to constitutional protection. Surely the government has no greater ability to prohibit bumper stickers displaying the confederate flag than it has to prohibit bumper stickers stating, “Yankees: Can’t live with ’em, can’t shoot ’em anymore.” Similarly, the government could not ban bumper stickers displaying the Israeli flag any more than it could those that read, “I stand with Israel.” Just as these distinctions between words and symbols cannot hold up, neither can distinctions between words and other kinds of images: The government could no more ban a bumper sticker depicting “The Last Supper” than it could ban one displaying a cross or a reference to “John 3:16.”

Moreover, displaying images does not lead to the concerns that animate this Court’s distinction between pure speech and expressive conduct (also known as symbolic speech). Unlike prohibiting the destruction of draft cards or public nudity or sleeping in parks, we are here dealing only with speech—“pure” speech, which is entitled to the highest protection the First Amendment affords.

C. Circuit Courts Are Split on Whether “Pure Speech” Is Reserved for Words

Regrettably, not all of the circuit courts have confined the definition of symbolic speech to speech mixed with conduct as this Court’s decisions have. At

one end of the spectrum lies the Tenth Circuit’s opinion below. At the other end lies a Ninth Circuit ruling that even the process of creating art is pure speech fully protected by the First Amendment. *See Anderson v. City of Hermosa Beach*, 621 F.3d 1051, 1068 (9th Cir. 2010). Other circuits have also weighed in on this issue, in different ways.

The Tenth Circuit below acknowledged the numerous forms of art that this Court has identified as pure speech, citing *Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston*, 515 U.S. 557, 569 (1995) (fiction); *Ward v. Rock Against Racism*, 491 U.S. 781, 790–91 (1989) (music without words); *Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 65–66 (1981) (dance); *Se. Promotions*, 420 U.S. at 557–58 (theater); *Joseph Burstyn v. Wilson*, 343 U.S. 495, 502–03 (1952) (movies); and *Kaplan v. California*, 413 U.S. 115, 119 (1973) (“pictures, films, paintings, drawings, and engravings”). *Cressman*, 798 F.3d at 952. Nevertheless, the court held that “all images are not categorically pure speech” and determined that Oklahoma’s mass production of the license plates with the Native American image meant that it was not pure speech, a title the court said it will only give to “those images whose creation is itself an act of self-expression.” *Id.* at 953–54.⁴

⁴ It is odd that the Tenth Circuit emphasized the mass production of license plates. Movies are mass produced and yet also fully protected as pure speech. *See Joseph Burstyn*, 343 U.S. at 502–03. Moreover, mass production is how speakers broaden the impact of their messages. The printing press is a tool of mass production. The Federalist Papers, Martin Luther King, Jr.’s Letter from a Birmingham Jail, and even the Bible, have been and are mass produced. A speaker who chooses to disseminate a message farther does not thereby communicate less. “The First Amendment protects more than just the individual on a soapbox

The Ninth Circuit, on the other hand, has had more respect for images as pure speech. In *Anderson v. City of Hermosa Beach*, it held that tattoos, with words or without, are fully protected under the First Amendment—as is their production and the business of making them. 621 F.3d at 1060 (“The tattoo *itself*, the *process* of tattooing, and even the *business* of tattooing are not expressive conduct but purely expressive activity fully protected by the First Amendment.”) (emphasis in original).

The Ninth Circuit held that tattoos are “a form of pure speech entitled to full constitutional protection” by considering many of the same cases the Tenth Circuit cited in its list of caveats. *Id.* at 1060–61. The court went on to hold that the tattooing process is “purely expressive activity” because this Court has never distinguished between pure speech and the process of creating pure speech. *Id.* at 1061–62 (citing *Minneapolis Star & Tribune Co. v. Minn. Comm’r of Revenue*, 460 U.S. 575, 582 (1983) (holding that a tax on ink and paper “burden[ed] rights protected by the First Amendment”). Finally, the court held that the business of tattooing is protected by the First Amendment because, as this Court has said, “the degree of First Amendment protection is not diminished merely because the [protected expression] is sold rather than given away.” *Id.* at 1062–63 (quoting *City of Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750, 756 n.5 (1988)) (modification in original).

Other circuits have also weighed in on this issue. A few have suggested that pure speech is limited to

and the lonely pamphleteer.” *Citizens United v. FEC*, 558 U.S. 310, 373 (2010) (Roberts, C.J., concurring). This principle holds true whether the speech takes the form of words or images.

words. *See, e.g., Tenaflly Eruv Ass'n v. Borough of Tenaflly*, 309 F.3d 144, 158 (3d Cir. 2002) (“Affixing *lechis* to utility poles does not involve the use of words, so the plaintiffs’ behavior is protected by the Free Speech Clause only if it constitutes expressive conduct.”); *Goulart v. Meadows*, 345 F.3d 239, 247–48 (4th Cir. 2003) (“The plaintiffs rightly point out that . . . teaching geography class and a fiber arts class . . . ‘involve the transmission of knowledge or ideas by way of the spoken or written word—speech.’ Because speech is the ‘activity’ in question here, we reject the notion that the plaintiffs must affirmatively prove the uniquely expressive nature of that speech.”).

Those circuits that have specifically considered the application of the First Amendment to visual art seem to agree with the Ninth Circuit’s characterization of it as pure speech. For example, the Sixth Circuit has stated, “[t]he protection of the First Amendment is not limited to written or spoken words, but includes other mediums of expression, including music, pictures, films, photographs, paintings, drawings, engravings, prints, and sculptures.” *ETW Corp. v. Jireh Publ’g, Inc.*, 332 F.3d 915, 924 (6th Cir. 2003).

In *Piarowski v. Ill. Comm. College Dist.* 515, 759 F.2d 625, 627–28 (7th Cir. 1985) (Posner, J.), the Seventh Circuit did not hesitate to say that stained glass windows on display in an art gallery were protected speech. The court made no reference to the symbolic-speech doctrine but rather stated that the First Amendment “embrace[s] purely artistic as well as political expression (and entertainment that falls far short of anyone’s idea of ‘art,’ such as . . . nude dancing . . .).” *Id.* at 628.

Similarly, in *Bery v. City of New York*, 97 F.3d 689, 691–92 (2d Cir. 1996), the court addressed a challenge to a municipal vendors’ law brought by several artists who had been arrested—and even had their paintings, photography, and sculptures confiscated or damaged—for selling on city sidewalks without a license. That court cited this Court’s precedents extending the First Amendment beyond words and concluded that the art at issue was “entitled to full First Amendment protection.” *Id.* at 694–96.

The Second Circuit also noted that “visual art is as wide ranging in its depiction of ideas, concepts and emotions as any book, treatise, pamphlet or other writing” and that art may be *better* able to reach people because it is not constricted by language variants. *Id.* at 695. Some languages, like Chinese, even incorporate pictograms into the written word itself. In sum, “[v]isual artwork is as much an embodiment of the artist’s expression as is a written text.” *Id.*

As the *Bery* case demonstrates, the level of First Amendment protection extended to visual art has significant implications: artists may be harassed and their artwork destroyed on the sidewalks. The lack of nationwide uniformity in this area may create uncertainty for those wishing to express themselves through art rather than words. That significance carries over to this case, where Oklahoma chose an image for its license plate and required all its citizens to display that image. This Court should grant certiorari to clarify that such an image is pure speech and that government action compelling its display is no different from that compelling the display of “Live Free or Die” or any other speech through words.

II. THE COURT SHOULD GRANT CERTIORARI TO ESTABLISH THAT A PERSON'S REASONS FOR OBJECTING TO COMPELLED SPEECH ARE IMMATERIAL TO THE QUESTION WHETHER HE IS BEING COMPELLED TO SPEAK

Because the Tenth Circuit found that the license-plate image was not pure speech but rather symbolic speech, the court then asked whether the message it conveyed was the same one to which Petitioner objected. *Cressman*, 798 F.3d at 963. Yet this Court has never said that a plaintiff must demonstrate that his reasons for objecting to the compelled speech align with the government's reasons for compelling it. Such a requirement is out of step with this Court's precedents in other areas of law and would be particularly unwise when the speech is art, a medium inherently open to interpretation.

A. Visual Art Is Inherently Open to Interpretation; No Single Interpretation Is Authoritative

Throughout history, people have debated what makes something art. Artists themselves have participated in these debates, often by pushing the envelope of what is accepted as "art." Andy Warhol's pop art took commercial advertisements and made them art (or were they already?). Jackson Pollock's drip-painting made art out of paint dropped onto canvas lying on the floor or splattered on a wall by giant fans. Anish Kapoor's *Cloud Gate*—better known as the Chicago Bean—is art in the form of a giant metallic sculpture that reflects the Chicago skyline.

Amidst the discussion of "what is art?" lies another question: who should decide what art is and how to

interpret it? Most people who take selfies in front of the Chicago Bean do not know any of the themes Mr. Kapoor intended to convey. Counsel were fascinated to learn that those themes include immateriality, spirituality, and the tension between the masculine and feminine. *The Cloud Gate by Anish Kapoor in 2004–2006*, What is Art? (May 10, 2011), <http://whatisart4.blogspot.com/2011/05/cloud-gate-by-anish-kapoor-in-2004-2006.html>. Pollock’s work is even more open to interpretation, and yet this Court said in *Hurley* that it is “unquestionably shielded” by the First Amendment. 515 U.S. at 569. That would still be true if Pollock’s home state of Wyoming decided to put one of his paintings on its license plate.

“Context matters,” said the Tenth Circuit, and thus “the reproduction of the Native American image on many thousands of standard license plates is not an exercise in self-expression to which full First Amendment protection is accorded.” *Id.* at 952. The court struggles to paint the image as so anodyne that one wonders why Oklahoma bothered to memorialize it in the first place. “Bereft of the size, dimensions, spatial relations, and other features of the *Sacred Rain Arrow* sculpture,” wrote the court below, “the depiction can hardly be said to convey Mr. Houser’s perception of the ‘strength, dignity, beauty, and spirituality of his people.’” *Id.* at 953–54. The license-plate image is apparently some sort of tchotchke, not a depiction of a piece of art that was sculpted to evoke an emotional, aesthetic, and intellectual response. Like the image of the Statue of Liberty on New York’s license plates, the image of the *Sacred Rain Arrow* statue is supposed to evoke emotions similar to seeing the statue itself. According to the Tenth Circuit,

however, the image of the sculpture evokes the *wrong* emotional and intellectual response in Mr. Cressman.

B. Cressman’s Reasons for Objecting to the Image Are Irrelevant

The court below got hung up on citations to compelled-speech cases in which this Court said that the government had impermissibly compelled the plaintiff to say things with which he disagreed. For instance, the Tenth Circuit cited *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239 (2015), in which this Court said, “the First Amendment stringently limits a State’s authority to compel a private party to express a view with which the private party *disagrees*.” *Cressman*, 798 F.3d at 963 (citing *Walker*, 135 S. Ct. at 2253) (emphasis added by the Tenth Circuit). But the issue there was not whether Confederate flags are speech—or what that speech means—but who speaks via a license plate. One can disagree with *Walker*’s outcome, as *amicus* does, but not because it resulted in speech compulsion.

Indeed, the compelled-speech doctrine exists to protect people from being forced by the government to speak against their conscience. See *Wooley*, 430 U.S. at 714 (“A system which secures the right to proselytize religious, political, and ideological causes must also guarantee the concomitant right to decline to foster such concepts. The right to speak and the right to refrain from speaking are complementary components of the broader concept of ‘individual freedom of mind.’”) (quoting *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943)). As this Court has said, “First Amendment freedoms are most in danger when the government seeks to control thought or to

justify its laws for that impermissible end. The right to think is the beginning of freedom, and speech must be protected from the government because speech is the beginning of thought.” *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 253 (2002).

The freedom to think—and free speech itself—would be greatly threatened if compelled speech cases hinged on whether the plaintiffs “really” disagree with the “actual” message the government was sending and thus can be compelled to speak because they oppose it for their own “wrong” reasons. For example, imagine if in *Wooley* the government had been able to argue that the state motto on the license plate merely showed support for New Hampshire and its history and that the Maynards could be compelled to display it because they objected to the “wrong” message. Or, conversely, imagine that Mr. Cressman were a Jehovah’s Witness, as in *Wooley*, and he objected to the image because he felt displaying it violated his religious beliefs. In that situation it seems likely the Tenth Circuit would have held differently. At the very least, the fact that the question is difficult to answer shows that the Tenth Circuit’s doctrine is in disarray.

Jehovah’s Witnesses also feature prominently in *Barnette*. There, the plaintiffs objected to the flag salute and recitation of the Pledge of Allegiance because they believed the flag to be an “image” which their religion forbade them from saluting. 319 U.S. at 629. But what if they were atheists who objected to the symbolism of the flag, whose stars represent “the heavens and the divine goal to which man has aspired from time immemorial.” *What Do the Colors of the Flag Mean?*, USFlag.org, <http://www.usflag.org/colors.html> (last visited Dec. 28, 2015). Surely the

government should not be able to defend the forced salute on the basis that, although the flag historically had such symbolism, most people today do not know that history and so that is not the message the government was sending.

And yet that is exactly what the Tenth Circuit held here. That court concluded that the image of the *Sacred Rain Arrow* sculpture did not carry the sculpture's symbolism onto the license plates because people may not generally know about the Native American legend behind the sculpture. *Cressman*, 798 F.3d at 952–54. Accordingly, Mr. Cressman's reasons for objecting to the image did not align with Oklahoma's purported reasons for putting it on the license plate and so the state could compel him to display it. Somehow, Mr. Cressman's First Amendment rights turn on (the government's perception of) his fellow citizens' understanding of the message conveyed by an image that he would rather not display.

The Tenth Circuit's decision thus rests on the court's dubious conclusion that most people who see the *Sacred Rain Arrow* sculpture on the license plate do not associate it with the Native American legend the sculptor had in mind. Therein lies the problem: where the plaintiff's particular reason for objecting to compelled speech must align with the message the government intended to send, the inquiry devolves into a subjective debate over meaning—and in this case, the meaning of art. This devolution is particularly troublesome because it effectively places the burden on the plaintiff to show that the government was not justified in compelling his speech when, as this Court has said time and again, in First Amendment cases the government bears the burden of justifying its speech restrictions or compulsions.

**C. As in Religious-Freedom Claims, Courts
Should Not Evaluate the Reasons Behind
an Objection to a Speech Compulsion**

In a Religious Freedom Restoration Act (“RFRA”) case, courts consider whether the government has imposed a substantial burden on the exercise of a plaintiff’s sincerely held religious beliefs. *See, e.g., Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2759 (2014). The requirement that beliefs be sincerely held means that courts will make a factual inquiry into whether the plaintiff actually believes what he claims. *United States v. Seeger*, 380 U.S. 163, 185 (1965). Occasionally the facts have shown that the plaintiff’s asserted beliefs were insincere or pretextual because he did not act consistent with those professed beliefs. *See, e.g., United States v. Quantaince*, 608 F.3d 717, 718–19 (10th Cir. 2010) (finding that the defendants did not sincerely believe that marijuana was a deity and a sacrament and accordingly RFRA did not protect them from prosecution).

But as this Court made clear in *Hobby Lobby*, “the federal courts have no business addressing . . . whether the religious belief asserted in a RFRA case is reasonable.” 134 S. Ct. at 2778. Similarly, this Court said in *Seeger* that “the ‘truth’ of a belief is not open to question.” 380 U.S. at 185.

Just as the plaintiff in a religious-freedom case need not prove that his belief is reasonable—or even theologically sound—a plaintiff making a compelled-speech claim should not be required to prove that his reasons for objecting to the government’s action are “worthy” in some manner. That has never been a part of the compelled-speech doctrine, and for good reason. This Court should clarify for the Tenth Circuit and

the other federal courts that they are to determine whether the government has met its burden of justification whenever it compels speech—regardless of the plaintiff’s particular reasons for objecting.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

Respectfully submitted,

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